IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

R.S.A. No. 2817 of 2005
Date of decision: March 15,2007

Pritam Kaur and another V. Gurmit Kaur and others

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri Sarjit Singh, Senior Advocate, with Shri Naresh Jain,Advocate for the appellant.
Shri Arihant Jain,Advocate with Shri Arun Jindal,Advocate, for respondents No.1 to 4.

Viney Mittal,J.(Oral)

Legal representatives of the plaintiff are the appellants before this court. In a suit for permanent injunction filed by him claiming that there was a passage to which he had acquired a right by prescription, the plaintiff has concurrently lost before the two courts below.

Both the courts below have held that plaintiff was having a joint land and the aforesaid joint land was having independent passage other than the passage which was claimed by the plaintiff. It has been held that there was no easement of necessity which was shown to be in existence in favour of the plaintiff.

Suit of the plaintiff has been dismissed by the trial court and his appeal has also failed before the learned first appellate court.

Shri Sarjit Singh, learned senior counsel appearing for the appellants has contended that the appellate court has relied upon order dated January 5,1995 passed by the Joint Development Commissioner exercising the powers of the Commissioner to non-suit the plaintiff but the aforesaid order had been stayed by the High Court vide order Ex. P/9 dated May 20,1997. Learned senior counsel has also maintained that both the courts below have merely non-suited the plaintiff by holding that there was no easement of

necessity whereas the specific case put up by the plaintiff was that he had acquired a right to the said passage through prescription since the said passage was being used by the plaintiff for more than 30 years.

I do not find any merit in the aforesaid contentions raised by the learned senior counsel.

Even if order dated January 5,1995 is ruled out of consideration, still the two courts below have taken into consideration the remaining evidence led by the defendants and have come to the conclusion that the plaintiff had a joint holding and the aforesaid land was having independent passage through khasra Nos. 46/2,9,11.

With regard to the other argument raised by the learned senior counsel, it may be noticed that there is nothing on record to suggest that the plaintiff had proved that he had acquired any easementary rights by prescription. On a specific query put up to the learned senior counsel, the learned counsel has referred to self serving statement of the plaintiff to claim that the existence of the said passage for a more than 30 years was proved. However, I find that mere bald statement of the plaintiff cannot be taken to sufficient to prove that the plaintiff had acquired any easementary right in the passage in question.

Nothing has been shown that the findings recorded by the two Courts below suffer from any infirmity or are contrary to the record.

No question of law, much less any substantial question of law, arises in the present appeal.

Dismissed.

March 15,2007 (Viney Mittal)

sks Judge